

LANDIS RATH & COBB LLP

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

919 MARKET STREET, SUITE 600
P.O. BOX 2087
WILMINGTON, DELAWARE 19899

Richard S. Cobb
Direct Dial: 302.467.4430
Email: cobb@lrclaw.com

Telephone: 302.467.4400
Facsimile: 302.467.4450

October 23, 2008

VIA FEDERAL EXPRESS

The Honorable Judge Judith K. Fitzgerald
United States Bankruptcy Court
Western District of Pennsylvania
5490 U. S. Steel Tower
Pittsburgh, PA 15219

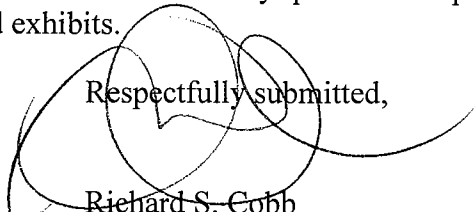
**Re: *W.R. Grace & Co. et al.*, United States Bankruptcy
Court District of Delaware, Case No. 01-01139(JKF)**

Dear Judge Fitzgerald:

Under cover of this letter, relating to the contested hearing on Debtors' Objection to Claims Asserted Under the Debtors' Credit Agreements dated as of May 14, 1998 and May 5, 1999, we enclose (i) a copy of the transcript of the hearing in the above-referenced case held on September 29, 2008, and (ii) a Joint Exhibit Binder containing the parties' proffered exhibits, including a Joint Exhibit Compendium listing the parties' respective evidentiary objections and brief responses relating to the exhibits.

The parties are available should the Court have any questions or prefer to hear argument regarding admissibility of the disputed exhibits.

Respectfully submitted,


Richard S. Cobb

cc: Andrew N. Rosenberg, Esquire
Michael R. Lastowski, Esquire
Kenneth Pasquale, Esquire
David M. Bernick, P.C.
Eric F. Leon, Esquire
James E. O'Neill, Esquire
Philip Bentley, Esquire
Teresa K.D. Currier, Esquire
Peter V. Pantaleo, Esquire
Marissa A. Piropato, Esquire

Joint Trial Exhibit List

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
1	Affidavit of Charles O. Freedgood of JPMorgan Chase Bank, N.A., in its Capacity as Administrative Agent Under the Pre-Petition Bank Credit Facilities, in Support of the Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999	Grace objects to paragraphs 17 and 18 of the Freedgood Affidavit as impermissible legal conclusions.	FRE 701. Paragraphs 17 and 18 are factual conclusions based on the affiant's perception.		
2	First Amended Joint Plan of Reorganization of USG Corporation and its Debtor Subsidiaries, as Modified	Hearsay to the extent offered for the truth of the matters contained therein. The Court may take judicial notice of the fact of the filing, but not of the truth of the matters stated in the filing.	FRE 201. Court may take judicial notice of this pleading filed in this Court, including that under the USG plan, the bank lenders were to receive full contract default interest.		

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
3	Declaration of Edwin N. Ordway, Jr. in Support of the Response of the Official Committee of Unsecured Creditors to Debtors' Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999	Fed. R. Evid. 104, 702. Ordway's opinion that "equity holders of the Debtors have benefited substantially as compared to the Lenders," (Ordway Decl. ¶ 7), and his opinion that the amount of default interest due to the Lenders is "de minimus," (id. ¶ 8), are unreliable and inadmissible under Daubert.	Acceptable; however, no deposition testimony relating to these issues is admissible. Therefore, the following portions of the Ordway Deposition (JX 30) should be excluded: 23:3 through 32:2 and 37:24 through 62:15.		
4	Responses and Objections of Debtors to the Official Committee of Unsecured Creditors of W.R. Grace & Co. and Bank Lender Group's First Request for Production of Documents, First Set of Interrogatories, and First Request for Admissions				
5	The Official Committee of Equity Holders' Responses and Objections to the Official Committee of Unsecured Creditors of W.R. Grace & Co.'s and Bank Lender Group's First Set of Interrogatories				

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
6	Declaration of Lewis Kruger in Support of the Official Committee of Unsecured Creditors' Response to Debtors' Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999	Debtors object to Exhibit C to the Declaration of Lewis Kruger, an April 21, 2008 letter from the Bank Lenders' counsel, on hearsay grounds.	Relates to factual issues regarding notice and reliance, and also offered to prove the fact of the communication.		
7	Amended Joint Plan of Reorganization (Jan. 13, 2005)				
8	Declaration of Mark A. Shelnitz in Support of Debtors' Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999				
9	Amended Disclosure Statement for the Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (Jan 13, 2005)				
10	Debtors' Form 10-K and Ex. 99-1 (Mar. 7, 2005)				

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
11	E-mail from Arlene Krieger to Janet Baer (with draft Plan Support Agreement attached) (Feb. 18, 2005)	No objection to the extent that the email and draft Plan Support Agreement are offered for the fact of the communication. However, to the extent the draft Plan Support Agreement, which was never signed, is offered to prove the fact of agreement, Debtors object on hearsay and foundation grounds.	Offered to prove that although the Creditors' Committee and Grace never executed a Plan Support Agreement, the Creditors' Committee drafted and proposed one, and Grace's counsel commented on the draft.		
12	Email from Janet Baer to Arlene Krieger (with K&E comments to draft Plan Support Agreement attached) (Mar. 16, 2005)	Same as Joint Exhibit 11.	801(d)(2). Party admission.		
13	Notices of Appointment of Official Committee of Unsecured Creditors [Dkt. Nos. 352 and 12767]	Hearsay to the extent offered for the truth of the matters contained therein. The Court may take judicial notice of the fact of the filing, but not of the truth of the matters stated in the filing.	FRE 201. Court may take judicial notice of this pleading filed in this Court.		
14	E-mail from R. Tarola to T. Maher (Feb. 14, 2005)				

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
15	E-mail from J. Baer to R. Tarola, M. Shelnitz, et al. (Feb. 27, 2006)		801(d)(2). Party admission.		
16	E-mail from K. Pasquale to A. Rosenberg (Apr. 15, 2008)				
17	E-mail from A. Krieger to K. Pasquale (May 9, 2007)				
18	April 7, 2008 Transcript of W.R. Grace & Co. Conference Call	Hearsay	FRE 801(d)(2). Party admission.		
19	Official Committee of Equity Security Holders' Memorandum in Support of Debtors' Motion to Exclude Certain Expert Opinions Relating to Current Future Asbestos Personal Injury Liability (Dec. 7, 2007)	Relevance. Also, hearsay to the extent offered for the truth of the matters contained therein. The Court may take judicial notice of the fact of the filing, but not of the truth of the matters stated in the filing.	FRE 801(d)(2) Party admission. Also, FRE 201. Court may take judicial notice of this pleading filed in this Court.		
20	Affidavit of Pamela D. Zilly in Support of Debtors' Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999				

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
21	Declaration of Robert M. Tarola in Support of Debtors' Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999				
22	July 21, 2008 Transcript of Proceedings Before The Honorable Judith K. Fitzgerald	Hearsay. The Court may take judicial notice of the fact of the hearing, but not of the truth of the statements made during the hearing.	FRE 201. Court may take judicial notice of this transcript filed in this Court.		
23	April 6, 2008 Term Sheet for Resolution of Asbestos Personal Injury Claims, Ex C to June 13, 2008 Debtors' Objection to the Unsecured Claims Asserted under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999				

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
24	Ex A to Debtors' Trial Brief In Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 of Sept 5, 2008; Letter from Lender, D.K. Acquisition Partners, L.P., dated November 11, 2004				
25	Ex B to Debtors' Trial Brief In Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 of Sept 5, 2008; Letter from D.E. Shaw dated November 12, 2004				
26	Ex C to Debtors' Trial Brief In Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 of Sept 5, 2008; Memo from Mark Shelnitz to David Siegel dated November 9, 2004				

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
27	Ex D to Debtors' Trial Brief In Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 of Sept 5, 2008; Copy of November 5, 2004 e-mail from R. Tarola regarding 4% default rate				
28	Ex E to Debtors' Trial Brief In Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 of Sept 5, 2008; e-mail from Arlene Krieger to Mark Shelnitz dated April 4, 2008				
29	Ex F to Debtors' Trial Brief In Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 of Sept 5, 2008; excerpt of Deposition Transcript of Edwin N. Ordway, Jr. dated August 29, 2008				
30	Complete Deposition Transcript of Edwin N. Ordway, Jr. dated August 29, 2008			See JX 3 above.	

JX	DESCRIPTION	Debtors' Objections (If Any)	Bank Lenders' Response to Debtors' Objections (If Any)	Bank Lenders' Objections (If Any)	Debtors' Response to Bank Lenders' Objections (If Any)
31	Debtors' Disclosure Statement for the Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of W.R. Grace & Co., et al., The Official Committee of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, and The Official Committee of Equity Security Holders Dated as of September 19, 2008 and Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of W.R. Grace & Co., et al., The Official Committee of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, and The Official Committee of Equity Security Holders Dated as of September 19, 2008				